

Re: Trademark Application of :  
 Azteca Foods, Inc. :  
 Serial No. 74-612715 :  
 Filing Date: December 19, 1994 : On Petition  
 For: FIESTA FRIDAY :  
 Petition Filed: October 30, 1996 :

Azteca Foods, Inc., has petitioned the Commissioner to permit filing of an extension request after the expiration of the six-month period from the mailing date of the Notice of Allowance. The petition is denied under Section 1(d)(2) of the Trademark Act.

## FACTS

The Notice of Allowance issued on December 19, 1995, for the above-identified application. Petitioner filed its Statement of Use on January 25, 1996. On June 20, 1996, the Examining Attorney issued an Office Action refusing registration because the specimens provided with the Statement of Use did not show use of the proposed mark in connection with the goods identified in the Notice of Allowance. In response to the June 20, 1996 Office Action, on July 8, 1996, Petitioner filed a "Request for Extension of Time to Show Use." On September 11, 1996, the Examining Attorney issued an Office Action explaining that Petitioner's extension request could not be accepted because it was filed more than six months after the mailing date of the Notice of Allowance. This petition followed.

## DECISION

The Commissioner is without authority to extend or waive the time for filing the Statement of Use. *In re Stakis plc*, 25 USPQ2d 1529 (Comm'r Pats. 1992); *In re L.R. Sport Inc.*, 25 USPQ2d 1533 (Comm'r Pats. 1992); *In re Twin Cities Public Television Inc.*, 25 USPQ2d 1535 (Comm'r Pats. 1992); *In re Custom Technologies Inc.*, 24 USPQ2d 1712 (Comm'r Pats. 1991). For this reason, and because the extension request was filed after expiration of the six-month period from the mailing date of the Notice of Allowance, the petition must be denied.

In addition to the statutory basis for denial of the petition, Trademark Rule 2.88(g) prohibits withdrawal of the SOU to return to the previous status of awaiting submission of an SOU, after a Statement of Use (SOU) has been filed. 37 C.F.R. §2.88(g).

The \$100 filing fee for the extension request will be refunded.

Philip G. Hampton, II  
Assistant Commissioner  
for Trademarks

PGH:EKM

Date:

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